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The Comptroller General of the United States

Washington, D.C. 20548

## **Decision**

Matter of:

Federal Electric Corporation

File:

B-232704

Date:

January 9, 1989

## DIGEST

Protester's proposal was properly rejected as unacceptable where agency reasonably determined that the firm took exception in its best and final offer (BAFO) to solicitation requirement for technical studies and correspondingly made significant manhour reductions for this effort. An offeror should not anticipate a further opportunity to revise its proposal after it makes its BAFO submission.

## DECISION

Federal Electric Corporation (FEC) protests the award of a contract to Contel Federal Systems under request for proposals (RFP) No. F19628-88-R-0023, issued by the Electronic Systems Division, Air Force Systems Command, Hanscom Air Force Base, Massachusetts for the design, siting, and installation of the Ground Wave Emergency Network (GWEN)1/ Relay Node Network Expansion. FEC contends that the Air Force failed to evaluate FEC's best and final offer (BAFO) in accordance with the evaluation scheme set forth in the RFP and improperly downgraded FEC's BAFO for unexplained labor cost reductions. We deny the protest.

The RFP was issued on May 6, 1988, and provided that a fixed-price contract would be awarded to the offeror determined to be the most advantageous to the government, price and other factors considered. The RFP called for the contractor, using relay node equipment sets provided as

<sup>1/</sup> GWEN is a radio relay communications network immune to the effects of High Altitude Electromagnetic Pulse and designed to carry critical attack warning data to numerous military installations.

government-furnished equipment, to design the expanded network, recommend deployment sequence, and perform the site selection process, which involves a site narrowing process. The contractor is required to identify and analyze candidate GWEN sites for each relay node site, prepare the Final Facility and Design Package for the preferred GWEN site chosen by the government, and construct a relay node installation at each preferred GWEN site.2/ The basic requirement is for installation of 30 completed relay node sites with an option for an additional 10 sites. There are also 2 variable quantity options for up to 50 additional sites.

Technical and price were the specific criteria listed in the RFP to be used in the evaluation of proposals. was more important than price. However, the RFP provided that proposed price would be a significant criterion for contract award, as part of an integrated assessment with the technical area. The technical area assessment included an evaluation of soundness of approach, understanding of the requirements, and compliance with the requirements. According to the RFP, compliance with the requirements referred to the extent to which the offeror's proposal provided evidence that solicitation requirements would be The RFP further provided for a cost realism assessment, including an evaluation of the extent to which each offeror's proposed cost indicated a clear understanding of, and sound approach to, satisfying solicitation requirements, and also including the technical risks identified during the evaluation of each offeror's proposal and associated costs.

<sup>2/</sup> Of particular revelancy to this protest, the RFP required that the successful contractor, during the site selection process, perform "site specific studies" at all candidate GWEN sites. These technical studies include ground conductivity, radio frequency interference, path profiles, and other studies to determine the suitability of each candidate GWEN site. These site specific technical studies are different from the separate topographic and soil studies which were only required at the finally selected preferred GWEN sites chosen by the government based on the site specific studies of each candidate GWEN site. site specific studies were required at all candidate GWEN sites; topographic and soil studies were only required at preferred GWEN sites finally chosen by the government. was confirmed by the government at a preproposal conference attended by all offerors.

Offers were received from FEC, Contel Federal Systems and RCA Government Communications Systems by the closing date. All offerors were found acceptable and thus within the competitive range. Subsequent to this determination, Deficiency Reports and Clarification Requests were issued to all offerors. Following discussions, the Air Force requested the offerors to submit BAFOs. The BAFO request specifically cautioned offerors that "if your BAFO contains changes from your previously negotiated proposal which are not adequately explained or which fail to provide complete traceability from your previous position, such changes may not be considered credible in the final evaluation and may become specific negative factors in the technical and/or cost and price realism areas." The request also specifically stated that any technical revision or noncompliance with contract terms and conditions submitted in the BAFO would not be subject to further negotiation.

All offerors submitted BAFOs. During the evaluation of FEC's BAFO, it was discovered that FEC had made significant reductions in labor hours, many of which were unsubstantiated. In its supporting rationale for one such cost reduction of \$507,713 (-20,216 labor hours), FEC stated that the reduction was due to "Clarification received that site specific studies need only be performed on the final selected GWEN site and not on all [candidate GWEN sites]."

The Air Force found FEC's BAFO to be unacceptable for failure to comply with the RFP's requirements for site studies. Additionally, since FEC had significantly reduced its labor hours in other areas, the Air Force changed the FEC proposal's risk assessment to "high" since the Air Force determined that the labor hour reductions in certain areas introduced a substantial technical risk because it appeared that FEC did not understand the contract requirements in those areas. Award was made to Contel on September 12, 1988, at a total price of \$29,986,763 (basic price and option exercised at time of award). FEC's total BAFO price, including options, was \$24,437,283.

As stated above, the principle basis for FEC's protest is that: (1) the Air Force failed to evaluate FEC's BAFO in accordance with the evaluation scheme set forth in the RFP; and (2) the Air Force improperly downgraded FEC's BAFO for

unexplained reductions in labor costs.3/ Specifically, FEC argues that the Air Force unreasonably interpreted the one sentence concerning site specific studies in FEC's BAFO cost proposal as having taken exception to the RFP requirements and, based on that one sentence, rejected FEC's lower priced and otherwise acceptable proposal. FEC maintains that the Air Force's interpretation was contrary to FEC's original and acceptable technical proposal, which was submitted as part of FEC's BAFO, and which demonstrates that FEC had every intention of complying with the GWEN specifications, including the necessary site studies at each of the candidate GWEN sites. FEC maintains that it used the phrase "site specific studies" in its BAFO cost proposal to indicate that the topographic and soil studies would not be performed at all candidate sites, precisely as had been clarified by the Air Force in preproposal conference questions and answers (Q/A) 56 and 75. FEC states that, in its BAFO, it eliminated substantial labor costs for the topographic and soil studies, which FEC previously (and erroneously) believed to have been required for all candidate sites. FEC contends that the Air Force had a duty to seek clarification rather than to summarily reject FEC's BAFO.

The agency defends its determination that FEC's BAFO was technically unacceptable on the basis that FEC in its technical proposal clearly recognized the difference between site specific studies for candidate sites and the facility design work (topographic and soil studies) for the preferred GWEN sites, and that the language in the BAFO clearly stated that FEC would not perform the required site specific studies for all candidate sites. Furthermore, an assessment of the changed labor hours for this task between FEC's initial proposal and the BAFO showed a 75 percent reduction in labor hours which was consistent with FEC's statement that it would not perform site specific studies on all candidate sites. The Air Force found that the reduction in effort was consistent with performing the studies for only the finally selected preferred GWEN sites.

<sup>3/</sup> In response to the agency report and informal conference, FEC also questioned whether the Source Selection Authority (SSA) was duly appointed in accordance with regulation. The agency provided FEC with a copy of the delegation of authority and an explanation of the applicable regulations. FEC was given the opportunity to comment on these documents but failed to do so. Since FEC failed to respond to the agency's rebuttal to this protest issue, it is deemed abandoned. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

Based on our evaluation of the record, including FEC's BAFO, we find the Air Force's rejection of FEC's proposal was reasonable. As stated above, the RFP specifically required at paragraph 2.8 of the siting plan the performance of site specific studies at all candidate sites. The RFP further stated that site specific studies will include ground conductivity, radio frequency interference, path profiles, and other technical studies to determine the suitability of each candidate site. The site selection process is completed by the government's choice of a preferred GWEN site based on the site specific studies. The contractor then analyzes the preferred site to develop a Final Facility Design Package to permit site construction. final design package includes detailed analyses, such as a topographic survey to determine site grading requirements, and soil investigations (borings) to determine soil bearing capacity to allow the design of equipment footings. clear from FEC's initial technical proposal that it clearly understood the RFP's requirements with respect to site specific studies and with respect to the topographic surveys, and the difference between the two. technical proposal accurately reflected what site specific studies were and that they would be performed at all However, FEC, in its BAFO cost proposal, candidate sites. specifically stated that "clarification4/ received that site specific studies need only be performed on the final selected GWEN site and not on all Candidate GWEN Sites" accounted for its reduced labor hours cost for this effort.

Based on the record, we think that the sentence in FEC's cost BAFO, standing alone, limiting site studies to preferred GWEN sites, perhaps reasonably could not be regarded as taking exception to this material requirement in view of the other statements in FEC's technical proposal. However, the record shows that FEC, consistent with the statement in its BAFO, drastically reduced its associated labor costs 75 percent from 26,680 hours to 6,464 hours. Further, the Air Force estimated that the site specific studies required approximately 11,700 to 12,800 labor hours; after its BAFO, FEC proposed only about half the necessary labor, consistent with the view that site specific studies would only be conducted on the 40 preferred GWEN sites

<sup>4/</sup> According to FEC, "clarification" refers to FEC's review of preproposal questions and answers in connection with preparing its BAFO which indicated that FEC had erroneously included topographic and soil studies costs associated with the finally selected sites in the site specific studies costs of its initial proposal.

rather than the 160 studies required. Therefore, since the, cost reduction reasonably confirmed the Air Force's interpretation of FEC's BAFO statement, that FEC was taking exception to the requirement for site specific studies, we think the Air Force properly rejected the proposal for this reason. This is especially so since FEC failed to comply with the cautionary terms of the request for BAFOs which warned offerors to adequately explain and "provide complete traceability" for any technical changes in the BAFOs.

We further find no merit to FEC's suggestion that after evaluation of BAFOs the agency was required to seek clarification concerning the meaning of the sentence. BAFO that does not comply with required terms of the solicitation properly may be rejected as technically ITT Telecommunications Division, B-185546, unacceptable. July 9, 1976, 76-2 CPD ¶ 24. While an agency sometimes may seek to clarify minor uncertainties in particular proposals, Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233, where the information sought from an offeror is essential to determining the acceptability of the proposal the agency's request for information constitutes the reopening of negotiations, RCA Service Co., B-219643, Nov. 18, 1985, 85-2 CPD  $\P$  563, and an agency has no legal duty to reopen the competition to permit a single offeror another chance to demonstrate the merits of its proposal. The Management and Technical Services Company, a subsidiary of the General Electric Co., B-209513, Dec. 23, 1982, 82-2 CPD ¶ 571.

Here, the agency had no way of determining from the BAFO that the "clarification" by FEC was not intended to limit site specific studies at candidate sites. We again note that FEC's technical proposal correctly responded to the RFP's requirement for site specific studies and FEC's cost proposal, prior to the BAFO, offered labor hours that accurately reflected the amount of work the agency estimated was required for the site specific studies. Furthermore, notwithstanding FEC's argument that its BAFO contained more than enough labor costs to perform the site specific studies in accordance with the RFP, we emphasize that the number of hours proposed by FEC in its BAFO was approximately half that the agency estimated FEC needed to perform the site specific studies. As we found above, it appears that the agency reasonably determined that FEC in its BAFO had taken exception to a material requirement of the RFP which consequently rendered FEC's proposal unacceptable and therefore the agency was not obligated to reopen negotiations.

Finally, FEC also objects to the Air Force's conclusion that FEC's significant reduction in labor hours in other areas rendered its proposal unrealistic in the areas affected by the reductions and thus introduced substantial technical risk because the agency concluded that FEC did not understand the contract requirements in those areas. In view of our finding above, with respect to the site specific studies, we need not consider the agency's additional reasons in rejecting FEC's proposal.

The protest is denied.

James F. Hinchman General Counsel